

PREFACE

Exempt Organizations (EO) is dedicated to fulfilling the IRS mission to provide America's taxpayers top quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness. Customer Education & Outreach (CE&O) works closely with Exempt Organizations staff to accomplish this by:

- Developing tailored education programs for customer categories
- Coordinating the development, revision and design of forms, publications and other non-speaker outreach activities
- Making standardized educational materials available for outreach efforts
- Establishing a way for customers to be heard

This workshop and our materials are part of a customized program for representatives of small and medium-sized exempt organizations. We hope that this text helps you become more familiar with tax laws governing exempt organizations and understand how compliance with these laws will strengthen the organization(s) you represent.

The material in this book is for educational use only and may not be cited as precedent.

/s/ Lois G. Lerner

Lois G. Lerner
Director, Exempt Organizations

CHAPTER 10

REQUIRED DISCLOSURES

Overview

The majority of exempt organizations must disclose to the IRS or the public certain information about their activities. An organization discloses this information by entering it on the appropriate lines of its annual information return. Separate rules govern disclosures relating to *quid pro quo* contributions and the sale of government information or services that are available for free. In addition, donors must have a written acknowledgment to claim a charitable deduction for certain donations. Exempt organizations may provide these, although they are not required.

Public Inspection and Copying of Annual Returns and Exemption Applications

An exempt organization must make its exemption application, annual information returns, and Forms 990-T (501(c)(3) organizations only) available for public inspection. Anyone may request them during regular business hours at the organization's principal business office and also at the organization's regional or district offices, providing that they have three or more employees.

The organization must provide a copy without charge, other than a reasonable fee for reproduction and postage costs, of all or any part of any application or return. Organizations may place reasonable restrictions on the time, place, and manner of in-person inspection and copying.

Annual Information Returns

An exempt organization must disclose its annual information return (Form 990 series), with schedules, attachments, and supporting documents filed with the IRS. An organization need not disclose the names and addresses of contributors, but all other information, including the amount of contributions, the description of non-cash contributions, and any other information, is releasable unless it identifies the contributor. An organization must make its annual information return available for a period of 3 years beginning on the date the return is required to be filed or is actually filed, whichever is later.

Additional information on information returns can be found in Chapter 8 of this text.

REQUIRED DISCLOSURES, Continued

**Annual
Business
Income Tax
Return**

A 501(c)(3) organization is required to disclose its unrelated business income tax returns (Form 990-T).

**Exemption
Application**

An organization must disclose its exemption application (Form 1023 or 1024) along with each of the following documents:

- All documents submitted with Form 1023 or Form 1024
 - All documents the IRS requires the organization to submit in support of its application
 - The exemption ruling letter issued by the IRS
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**Public
Inspection of
Application for
Exemption for
a Subordinate
Organization**

If a subordinate organization covered by a group ruling receives a request for inspection of its application for exemption and supporting materials, it must make available a copy of documents submitted to the IRS by the parent organization within a reasonable amount of time.

Anyone may also ask to see the documents at the parent organization's principal office.

**Public
Inspection of
Annual Returns
for a
Subordinate
Organization**

A subordinate organization that does not file its own Form 990 must acquire a copy of the group return filed on its behalf by the parent organization and make the material available to anyone in a reasonable amount of time. Anyone may ask to inspect the group return at the principal office of the parent organization, as well.

REQUIRED DISCLOSURES, Continued

Information That may be Withheld from Public Inspection

Information that may be withheld from public inspection includes:

- Information relating to a trade secret, patent, style of work or apparatus that, if released, would adversely affect the organization (requires prior approval by the IRS to withhold)
- Information that would adversely affect the national defense (requires prior approval by the IRS to withhold)
- Unfavorable rulings or determinations
- Rulings or determination letters revoking or modifying a favorable determination letter
- Certain other memoranda or letters filed with or issued by the IRS

See Publication 557, *Tax-Exempt Status for Your Organization*, for details.

Organizations Without Permanent Offices

An organization must allow anyone to inspect its application for exemption or annual returns at a reasonable location of the organization's choice. It should occur within a reasonable amount of time (normally not more than 2 weeks) and at a reasonable time of day. The organization may opt to mail a copy of the application or return in lieu of allowing an inspection within 2 weeks of receiving the request.

The same rule applies to organizations that maintain a permanent office that has no office hours or very limited hours during certain times of the year.

Important Facts

New Ideas

REQUIRED DISCLOSURES, Continued

Making Applications and Returns Widely Available

An exempt organization does not have to comply with requests for copies of its annual return, Form 990-T, and exemption applications if it makes them widely available. However, making these documents available does not relieve the organization from providing its documents for public inspection.

The organization can make its application and returns widely available by posting the application and returns on the Internet. The organization must notify any individual requesting a copy where the documents are available, including the web address, if applicable.

For requests made in person, the notice must be provided immediately. For requests made in writing, the notice must be provided within 7 days.

Penalties for Failure to Comply with Public Inspection Requirements

A person who fails to make an annual return available for inspection must pay a penalty of \$20 for each day the failure continues, up to \$10,000 per return.

For the exemption application, the penalty is \$20 per day, with no limit on the total amount of the penalty. No penalty will be imposed if the failure is due to reasonable cause.

Any person who willfully delivers or discloses a fraudulent return or materially false statements to any IRS official or employee must either pay a penalty of up to \$10,000 or be imprisoned for a maximum of 1 year, or possibly be subject to both. Additionally, any person who fails to comply with the public inspection requirement for any return or application will pay a penalty of \$5,000 for each such return or application, or copies of such.

REQUIRED DISCLOSURES, Continued

***Quid Pro Quo* Contributions**

A *quid pro quo* contribution may only be deducted to the extent that the contribution exceeds the fair market value of the goods or services the donor receives in return for the contribution.

If an organization receives a *quid pro quo* contribution in excess of \$75, the organization must provide a written statement which:

- Informs the donor of the rule on deductibility
 - Provides the donor with a good-faith estimate of the fair market value of the goods or services
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Example

A donor gives a charitable organization \$100 in exchange for a concert ticket with a fair market value of \$40. The donor's tax deduction may not exceed \$60. Because the donor's payment exceeds \$75, the charitable organization must furnish a disclosure statement to the donor, even though the deductible amount does not exceed \$75.

Important Facts

New Ideas

REQUIRED DISCLOSURES, Continued

Exceptions to Written Disclosure

A written disclosure statement is not required:

- Where the goods or services given to a donor meet the “token exception,” the “membership benefits exception,” or the “intangible religious benefits exception” described on pages 10-9 and 10-10.
 - When there is no donation involved, such as in a typical museum gift shop sale.
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Written Disclosure: Penalty

Charities are penalized for not meeting the written disclosure requirement involving quid pro quo contributions. The penalty is \$10 per contribution, not to exceed \$5,000 per fundraising event or mailing. An organization may avoid the penalty if it can show reasonable cause.

Disclosure or Sale of Information or Services Available Free From the Government

If an exempt organization offers to sell goods or services that are available for free from the federal government, the organization must disclose that fact in a conspicuous and easily recognized format.

An organization will be penalized if it fails to comply with this requirement, particularly if the failure is intentional. The penalty is the greater of \$1,000 for each day the failure occurred, or 50 percent of the total cost of all offers and solicitations that were made by the organization the same day that it failed to meet the requirement.

Notice 88-120

See Notice 88-120 for further guidance.

REQUIRED DISCLOSURES, Continued

Substantiation of Contributions

An organization has no disclosure requirements for cash or non-cash contributions for which the organization provides no goods or services in return.

However, a donor must obtain a written acknowledgement from a charity for any single contribution of \$250 or more before the donor can claim a charitable contribution on his or her federal income tax return.

Cash Contributions

A donor cannot claim a tax deduction for any contribution of cash, check or other monetary gift made on or after Jan. 1, 2007, unless the donor maintains a record of the contribution in the form of either a bank record (such as a cancelled check) or a written communication from the charity (such as a receipt or a letter) showing the name of the charity and the date and amount of the contribution.

Vehicle Donations

If a donor contributes a motor vehicle, boat, or airplane with a claimed value of more than \$500, the recipient organization must furnish a written acknowledgment of the contribution using Form 1098-C, *Contributions of Motor Vehicles, Boats, and Airplanes*. Otherwise, the donor cannot claim a deduction of more than \$500. See the Instructions for Form 1098-C, or see Publication 4302, *A Charity's Guide to Vehicle Donations*, for more information.

Important Facts

New Ideas

REQUIRED DISCLOSURES, Continued

Written Acknowledgment: Requirements

A donor cannot claim a tax deduction for any single contribution of \$250 or more unless the donor obtains a contemporaneous, written acknowledgment of the contribution from the recipient organization. Although it is a donor's responsibility to obtain a written acknowledgment, an organization can assist a donor by providing a timely, written statement containing the following information:

- Name of organization
- Amount of cash contribution
- Description (but not the value) of non-cash contribution
- Statement that no goods or services were provided by the organization in return for the contribution, if that was the case
- Description and good faith estimate of the value of goods or services, if any, that an organization provided in return for the contribution
- Statement that goods or services consisted entirely of intangible religious benefits, if that was the case

It is not necessary to include either the donor's SSN or TIN on the acknowledgment. A separate acknowledgment may be provided for each single contribution of \$250 or more, or one acknowledgment, such as an annual summary, may be used to substantiate several single contributions of \$250 or more.

There are no IRS forms for the acknowledgment. Letters, postcards, or computer-generated forms are acceptable. An organization can provide either a paper copy or an e-mail addressed to the donor.

A donor should not attach the acknowledgment to his or her individual income tax return, but must retain it to substantiate the contribution. Separate contributions of less than \$250 will not be aggregated. An example of this could be weekly offerings to a donor's church of less than \$250, even though the donor's annual total contributions are \$250 or more.

REQUIRED DISCLOSURES, Continued

**Written
Acknowledgement:
Contemporaneous Defined**

Recipient organizations typically send written acknowledgments to donors no later than January 31 of the year following the donation. A donor must receive the acknowledgment by the earlier of the date on which the donor actually files his or her individual federal income tax return for the year of the contribution, or the due date (including extensions) of the return.

**Written
Acknowledgement:
Describing
Goods and
Services**

The acknowledgment must describe goods or services an organization provides in exchange for a contribution of \$250 or more. It must also provide a good faith estimate of the value of such goods or services. A donor must generally reduce the amount of the contribution deduction by the fair market value of the goods and services provided by the organization. Goods or services include cash, property, services, benefits, or privileges.

**Goods and
Services -
Token
Exception**

Insubstantial goods or services do not have to be described in the acknowledgment. Goods and services are considered to be insubstantial if the payment occurs in the context of a fundraising campaign in which a charitable organization informs the donor of the amount of the contribution that is deductible, and the:

- Fair market value of the benefits received does not exceed the lesser of 2 percent of the payment or \$96 (for tax year 2010).
- Payment is at least \$48, the only benefits received in connection with the payment are token items bearing the organization's name or logo (e.g., calendars, mugs, or posters), and the cost of all the benefits in the aggregate, are within the limits for low-cost articles, which is \$9.60 (for tax year 2010). The low-cost amount is set annually.

Free, unordered, low-cost articles are also considered insubstantial.

Example: If a charitable organization gives a coffee mug bearing its logo and costing the organization \$9.60 or less to a donor who contributes \$48 or more, the organization may state that no goods or services were provided in return for the contribution. The contribution is deductible.

REQUIRED DISCLOSURES, Continued

Goods and Services - Membership Benefits Exception

An annual membership benefit is also considered to be insubstantial if it is provided in exchange for an annual payment of \$75 or less and consists of annually recurring rights or privileges, such as:

- Free or discounted admissions to the charitable organization's facilities or events
- Discounts on purchases from the organization's gift shop
- Free or discounted parking
- Free or discounted admission to member-only events sponsored by an organization, where a per-person cost (not including overhead) is within the low-cost articles limits

Example: If a charitable organization offers a \$75 annual membership that allows free admission to all of its weekly events, plus a \$20 poster, a written acknowledgment need only mention the \$20 value of the poster, since the free admission would be considered insubstantial.

Intangible Goods and Services - Religious Benefits Exception

If a religious organization provides only intangible religious benefits to a contributor, the acknowledgment does not need to describe or value those benefits. It can simply state that the organization provided intangible religious benefits to the contributor.

Intangible religious benefits are those provided by a tax-exempt organization operated exclusively for religious purposes and are not usually sold in commercial transactions outside a gift context.

Examples include admission to a religious ceremony and a *de minimis* tangible benefit, such as wine used in a religious ceremony. Benefits that do not count as intangible religious benefits include education leading to a recognized degree, travel services, and consumer goods.

REQUIRED DISCLOSURES, Continued

Written Acknowledgment: Payroll Deductions

When a donor makes a single contribution of \$250 or more by payroll deduction, the donor does not need an acknowledgment. But if the donor's employer withheld \$250 or more from a single paycheck, the donor must keep:

- A pay stub, Form W-2, *Wage and Tax Statement*, or other document furnished by the employer that proves the amount withheld
- A pledge card or other document that states the organization does not provide goods or services in return for any contribution made to it by payroll deduction

The donor must also keep these records for any contribution by payroll deduction, regardless of amount. The pledge card or other document must include the statement regarding goods and services only if the employer withheld \$250 or more from a single paycheck.

Written Acknowledgment: Unreimbursed Expenses

If a donor makes a single contribution of \$250 or more in the form of unreimbursed expenses (e.g., out-of-pocket transportation expenses incurred in order to perform donated services for an organization), then the donor must obtain a written acknowledgment from the organization containing:

- A description of the services provided by the donor,
- A statement of whether the organization provided goods or services in return for the contribution,
- A description and good faith estimate of the value of goods or services, if any, that an organization provided in return for the contribution, and
- A statement that goods or services consisted entirely of intangible religious benefits, if that was the case.

In addition, a donor must maintain adequate records of the unreimbursed expenses.

Example: A representative attending an annual convention of a charitable organization purchases an airline ticket to travel to the event. The organization does not reimburse the delegate for the \$500 ticket. The representative should keep a record of the expenditure, such as a copy of the ticket. The representative should also request that the organization produce a description of the services that the representative provided and a statement that the representative received no goods or services in return.

REQUIRED DISCLOSURES, Continued

Examples of Written Acknowledgements

The following examples are of written acknowledgements:

- “Thank you for your cash contribution of \$300 that (organization’s name) received on December 12, 2010. No goods or services were provided in exchange for your contribution.”
- “Thank you for your cash contribution of \$350 that (organization’s name) received on May 6, 2010. In exchange for your contribution, we gave you a cookbook with an estimated fair market value of \$60.”
- “Thank you for your contribution of a used oak baby crib and matching dresser that (organization’s name) charity received on March 15, 2010. No goods or services were provided in exchange for your contribution.”

The following is an example of a written acknowledgment where a charity accepts contributions in the name of one of its activities:

- “Thank you for your contribution of \$450 to (organization’s name) made in the name of its Special Relief Fund program. No goods or services were provided in exchange for your contribution.”

No Penalty

An organization that does not acknowledge a contribution (other than a quid pro quo contribution greater than \$75 – see page 10-6 “Written Disclosures”) incurs no penalty; but without a written acknowledgment, the donor cannot claim the tax deduction.

REQUIRED DISCLOSURES, Continued

Written Acknowledgment: Contributions of Motor Vehicles, Boats, and Airplanes

A donor may not claim a deduction greater than \$500 for contributing a motor vehicle, boat, or airplane unless the organization provides the donor with a properly completed Form 1098-C, *Contributions of Motor Vehicles, Boats and Airplanes*, and the donor attaches a copy of the form to the income tax return on which he or she claims the deduction. If the organization sells the donated vehicle, the donor's deduction is limited to the gross proceeds of the sale.

The organization is required to give the donor a written acknowledgement on Form 1098-C within 30 days of the sale of the vehicle. In addition, the organization must file a copy of the Form 1098-C with the IRS by February 28 (March 31, if filing electronically for tax year 2010) of the year after the year it sends the copy of Form 1098-C to the donor.

Different rules apply if the organization makes significant intervening use or material improvement to the donated vehicle, or transfers the vehicle at significantly below fair market value to a poor or needy individual in furtherance of the organization's charitable purposes. In those instances, the organization must give the donor a written acknowledgment on Form 1098-C within 30 days of the donation. For further information, *see* Publication 4302, *A Charity's Guide to Vehicle Donations*.

For More Information

- Form 1098-C, *Contributions of Motor Vehicles, Boats, and Airplanes*
 - Publication 526, *Charitable Contributions*
 - Publication 557, *Tax-Exempt Status for Your Organization*
 - Publication 1771, *Charitable Contributions - Substantiation and Disclosure Requirements*
 - Publication 4221-PC, *Compliance Guide for 501(c)(3) Public Charities*
 - Publication 4302, *A Charity's Guide to Vehicle Donations*
 - Instructions to Form 990, *Return of Organization Exempt from Income Tax*
 - Notice 88-120: available at www.irs.gov/charities/article/0,,id=96112,00.html
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Forms and Publications

You may order forms and publications by calling (800) 829-3676, or by downloading them from www.irs.gov/formspubs/.

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CHAPTER 11

CLOSING

Exempt Organizations and the Internal Revenue Service

The IRS's EO office promotes compliance with the tax laws governing exempt organizations. It does this:

- Through outreach and educational efforts
 - By issuing rulings that apply tax laws to an exempt organization's specific set of facts
 - By issuing general guidance made available to the public, including revenue procedures
 - Through examinations and other compliance activities
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Ways Exempt Organizations Can Get Help from the IRS

The IRS has several ways representatives of exempt organizations can get help on tax issues:

Customer Account Services: Call (877) 829-5500 (toll free). Ask EO specialists general questions about exempt organizations or questions about a specific organization's account. The caller must have the organization's employer identification number (EIN) handy and know the organization's legal name.

For some account-specific questions, the caller will need to establish his or her right to access the information. He or she must be an authorized officer or representative of the organization with power-of-attorney rights.

EO Website: Point your browser to www.irs.gov/eo for a wealth of information and how-to assistance including:

- Descriptions, rules and requirements for different types of exempt organizations
 - Life Cycle of an EO
 - Published guidance
 - Tips on how to avoid filing errors
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CLOSING, Continued

More Ways Exempt Organizations Can Get Help from the IRS

Web-based Training. Go to www.stayexempt.irs.gov to participate in a virtual workshop or to view on-line mini-courses on a variety of EO topics.

Forms and Publications: Call (800) 829-3676 to order free IRS publications and forms, or download them from the IRS website at www.irs.gov.

EO Update: Subscribe to this free IRS e-mail service to receive the following: news releases, new forms, guidance and other publications, changes, and additions to the EO Web site page and information about upcoming training and outreach events. Visit the EO Update page on <http://www.irs.gov/eo> to subscribe.

The IRS Needs YOUR Help

The IRS wants your feedback on our products. Please contact us with your recommendations on changes or additions that would improve your understanding of exempt status requirements.
